

1 The Honorable John C. Coughenour
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7 UNITED STATES DISTRICT COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 JOHNNY GARZA,

13 Defendant.

14 No. CR20-032JCC

15
16 **RESPONSE TO DEFENDANT'S
17 MOTION TO PROCEED WITH
18 GUILTY PLEA HEARING BY
19 TELECONFERENCE**

20 The United States of America, by and through Brian T. Moran, United States
21 Attorney for the Western District of Washington, and Thomas M. Woods, Assistant
22 United States Attorney for said District, respectfully submits this response to the
23 defendant's motion to proceed with a guilty plea hearing by teleconference.

24 **I. BACKGROUND**

25 The defendant is currently charged with multiple crimes stemming from his
26 involvement in a scheme to mail and/or deliver threatening posters to journalists and
27 advocates, particularly Jews and other minorities. The parties have reached a tentative
recommend any sentence.

1 By successive general orders of the Court, the Seattle courthouse currently is
 2 closed. The defendant now asks this Court to set a hearing—which all parties would
 3 attend remotely—so that he can enter plea of guilty.

4 **II. APPLICABLE LAW**

5 The Federal Rules of Criminal Procedure make no provision for a defendant to
 6 enter a guilty plea except while present in open court. Although some of the rules permit
 7 certain hearings to take place by video teleconferencing, entry of a guilty plea to a felony
 8 offense is not among them. *See* Fed. R. Crim. P. 5(f) (permitting initial appearance by
 9 video if the defendant consents); Fed. R. Crim. P. 10(c) (permitting arraignment by video
 10 if the defendant consents); Fed. R. Crim. P. 43 (permitting, *inter alia*, arraignment, plea,
 11 trial, and sentencing by video in misdemeanor cases if the defendant consents). Further,
 12 Rule 11 requires the court accepting the defendant’s guilty plea to personally address the
 13 defendant in open court. Fed. R. Crim. P. 11(b)(1), (2).

14 In light of the COVID-19 pandemic and public health crisis, Congress enacted the
 15 Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). That statute
 16 provides that certain criminal proceedings may occur by video teleconferencing during
 17 the coronavirus national emergency. CARES Act, § 15002. Specifically, the legislation
 18 permits a guilty plea in a felony case to be entered via video teleconference if a number
 19 of conditions are met.

20 First, the Judicial Conference of the United States must find that the coronavirus
 21 emergency will materially affect the functioning of the federal courts generally or a
 22 particular court. CARES Act, § 15002(b)(2)(A). It has done so. *See* “Judiciary
 23 Authorizes Video/Audio Access During COVID-19 Pandemic,” Administrative Office of
 24 the United States Courts (published March 31, 2020).¹

25 Second, the chief district judge of the affected district must specifically find that
 26 “felony pleas under Rule 11 of the Federal Rules of Criminal Procedure . . . cannot be

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 28 ¹ This material is available at <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.
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1 conducted in person without seriously jeopardizing public health and safety.” CARES
 2 Act, § 15002(b)(2)(A). Chief Judge Martinez has done so. GO 09-20 (June 25, 2020).

3 Third, the district judge in the particular case must find “for specific reasons that
 4 the plea . . . in that case cannot be further delayed without serious harm to the interests of
 5 justice.” CARES Act, § 15002(b)(2)(A); *see also* GO 04-20. In his motion, the
 6 defendant mentioned the risk of flying from Arizona, where a significant number of cases
 7 exist, to Seattle. The defendant also mentioned wanting to avoid a series of continuances,
 8 given the travel risk is likely to persist even after the courthouse reopens. In addition,
 9 defense counsel shared with the government two additional concerns:

10 Mr. Garza would like to resolve his case as soon as possible, as he wants to
 11 move on with his life and take classes, and continue to learn from his
 12 mistakes.

13 Mr. Garza’s current conditions of release make it very difficult for him to
 14 move past this case and do the things he would like to do to make up for his
 15 actions, so he would like to resolve his case as soon as possible, while still
 16 taking precautions due to the pandemic, so he can be a positive influence
 17 going forward.

18 These grounds are adequate for the Court to conclude that delaying entry of his
 19 plea would result in the requisite “serious harm to the interests of justice” under the
 CARES Act.

20 Finally, conducting a hearing by video teleconferencing “may only take place with
 21 the consent of the defendant.” CARES Act, § 15002(b)(4); *see also* GO 04-20. That
 22 consent should be articulated on the record, although it need not be in writing. GO 04-20.
 23 It appears that the defendant will consent.

24 In addition to proceeding by video teleconference, entry of a guilty plea by
 25 telephone conference instead is also authorized if an additional criterion is met: “video
 26 teleconferencing is not reasonably available.” CARES Act, § 15002(b)(2)(A). Video
 27 teleconferencing is available in this court, and has been successfully used for a number of
 28 hearings over the last couple of months. The defendant can attend via video (using the

1 WebEx platform) at the same time as his attorney. A separate line can be established to
2 allow the defendant and his attorney to confer during the hearing.

3 **III. CONCLUSION**

4 If this Court finds that delaying entry of the defendant's guilty plea in this case
5 cannot be further delayed without serious harm to the interests of justice, the government
6 respectfully requests that the Court make a record of that finding, either in writing if the
7 matter is referred to a magistrate judge for entry of the plea, or orally during the hearing
8 if this Court intends to take the plea. The government also respectfully requests that, at
9 the beginning of the plea hearing, the judicial officer personally address the defendant to
10 confirm that the remote hearing is held with his consent. Finally, because video
11 teleconferencing is available in this district, the government requests that any such
12 hearing occur by video instead of only by telephone.

13 Dated this 18th day of August, 2020.

14 Respectfully submitted,

15 BRIAN T. MORAN
16 United States Attorney

17 s/ Thomas M. Woods
18 THOMAS M. WOODS
19 Assistant United States Attorney
20 700 Stewart Street, Suite 5220
21 Seattle, WA 98101-1271
22 Telephone: (206) 553-7970
23 E-Mail: Thomas.Woods2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendant.

s/ Courtney Goertzen
COURTNEY GOERTZEN
Paralegal Specialist
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-7970
E-mail: Courtney.Goertzen@usdoj.gov